

<sup>28</sup>  
~~23~~. A process for the production of apomictic plants, comprising introducing the nucleic acid of claim <sup>25</sup>~~20~~ into the genome of a plant.

<sup>29</sup>  
~~24~~. A process for the production of apomictic Gramineae, comprising introducing the nucleic acid of claim <sup>26</sup>~~21~~ into the genome of a Gramineae.

<sup>30</sup>  
~~25~~. A process for the production of apomictic maize, comprising introducing the nucleic acid of claim <sup>27</sup>~~22~~ into the genome of maize.

### REMARKS

Prior to entry of the claim amendments presented above, claims 1-14, 16 and 19 were pending in the application. Claims 1-10, 12-14 and 16 were withdrawn from consideration. Claims 11 and 19 were rejected. In the present amendment, all claims have been canceled and new claims 20-25 have been added. Accordingly, with entry of this amendment, claims 20-25 are pending. The cancellation of claims is made herein without prejudice or disclaimer of the subject matter recited therein, and applicants reserve all rights to such subject matter.

### **Drawings**

With an indication of allowability, Applicants will file corrected formal drawings.

### **Rejections Under 35 USC §101**

Claim 11 was rejected under 35 USC § 101, first paragraph, for being directed toward non-statutory subject matter. Claim 19, which is based on former claim 11, is directed to an isolated nucleotide, thereby rendering this rejection moot.

### **Rejections Under 35 USC §112, First Paragraph**

Claims 11 and 19 rejected under 35 USC § 112, first paragraph, for lack of enablement. Applicants contend that they have provided ample guidance in the specification

to allow one of ordinary skill in the art to practice the invention without undue experimentation, thereby enabling the application. Applicants urge that, contrary to the Examiner's allegation, they have provided guidance as to the sequence of the elongate gene in the form of the partial sequences present in the specification. See page 24. Moreover, applicants have provided guidance for isolating the elongate gene. See page 19, second full paragraph. Applicants also have provided sufficient guidance on the genetic transformation of maize that would allow one of ordinary skill to practice the claimed invention. See pages 11-13.

Claims 11 and 19 were rejected under 35 USC § 112, first paragraph, for lack of written description. In response to this rejection applicants intend to deposit a plasmid containing the mutated elongate gene of maize, which they possessed as of filing date of this application. Applicants note also that they have described the function of the encoded elongate protein as causing apomixis. Furthermore, they have provided a partial nucleotide sequence for this protein. Therefore, applicants have reasonably conveyed to one of ordinary skill in the art that they had possession of the claimed invention at the time the application was filed.

#### **Rejections Under 35 USC §112, Second Paragraph**

Claims 11 and 19 were rejected under 35 USC § 112, second paragraph, for being indefinite. The new method and product claims overcome this rejection by removing the informalities of the former claims and positively reciting the method.

#### **Rejections Under 35 USC §102(a)**

Claims 11 was rejected under 35 USC § 102(a) as being anticipated by Rhodes. Applicants have replaced claim 11 with claim 19, which recites an isolated nucleotide. The Examiner has stated that such an amendment is sufficient to obviate this rejection.


#### **CONCLUSION**

In view of the above remarks and amendments, it is respectfully submitted that this application is in condition for allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to telephone the undersigned at the number listed below if the Examiner believes this would be helpful in advancing the application to issue.

Respectfully submitted,

Date February 25, 2002

By



FOLEY & LARDNER  
Washington Harbour  
3000 K Street, N.W., Suite 500  
Washington, D.C. 20007-5109  
Telephone: (202) 672-5446  
Facsimile: (202) 672-5399

Matthew E. Mulkeen  
Registration No. 44,250

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.